



October 25, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342

OR2002-6050

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171268.

The Texas Department of Criminal Justice (the "department") received a written request for certain records pertaining to applicants for the position of Countroom Supervisor at the Hilltop Unit. You contend that the applicants' social security numbers and the interview questions and model answers utilized during the hiring process are excepted from required disclosure pursuant to sections 552.117 and 552.122(b), respectively, of the Government Code. We assume the department has released the other requested information to the requestor; it is has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

You state that the interview forms you submitted to this office contain "several" department employees' social security numbers. Section 552.117(3) of the Government Code requires the department to withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" a department employee "has family members." Accordingly, we agree that the department must withhold all department employees' social security numbers pursuant to section 552.117(3) except for the requestor's social security number, which must be released in this instance pursuant to section 552.023 of the Government Code.

However, it is not apparent to this office that all of the applicants are current department employees. We therefore must address whether the department must withhold any other social security numbers contained in the records at issue. Section 552.101 of the Government Code requires the withholding of information made confidential under statutory law. Social security numbers are excepted from required public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), but only if the social security numbers were obtained or are

maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any of the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under the Social Security Act. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We now address whether the submitted interview questions and answers are excepted from required public disclosure. Section 552.122(b) of the Government Code protects from public disclosure a "test item developed by a . . . governmental body." Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Section 552.122(b) is applicable only where the test item constitutes a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." This exception does not apply to evaluations of an employee's overall job performance or suitability. *See id.* at 6. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *See id.*

After reviewing the submitted materials, we agree that questions 1, 2, 3, 4, 5, and 6 constitute standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. Because the answers to those questions may reveal the substance of those questions, we conclude that the department may withhold these six test items and the corresponding answers pursuant to section 552.122(b). The remaining requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

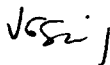
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/lmt

Ref: ID# 171268

Enc: Submitted documents

c: Ms. Myrtice L. Moritz
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(w/o enclosures)